

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 67 OF 2010

*(From the Decision of the District Land and Housing Tribunal of **ILALA** District at **ILALA** in Land Case No. 294 of 2007)*

SHARACK A. MIMO & ANOTHERAPPELLANT

VERSUS

SALIMA HUSSEIN MWASARESPONDENT

R U L I N G

FIKIRINI, J:

This is a ruling in respect of preliminary points of objection raised by Salima Hussein Mwasa hereinafter referred as the applicant against the appeal filed by Shadrack Mimo and another hereinafter referred as the respondents.

The applicant raised three points of objection namely:

- 1. That the applicant's application has been overtaken by events.*

2. *That the applicant's application is hopelessly time barred, and*
3. *That the applicant's affidavit is incurable and defective for failure of the Commissioner for oaths to state to whether the deponents was duly identified to him or was personally known to him which was mandatory requirement.*

The application was supported by the applicant's counter affidavit and oral submissions made during hearing. It was the applicant's submission that the respondents were hopelessly time barred since it is almost 8 months after the decision before they filed for this application. She further submitted that the respondents appeal papers were not properly signed. The documents were therefore bare before the court.

As for the copy of judgment annexed to the application and memorandum of appeal, it was her position that the referred judgment had nothing to do with the respondents as the case was between the present applicant and Hussein Sadiki & Sons. According to her the respondents were supposed to annex the decision in Salima Hussein Mwasu versus Shadrack Mimi & Tunda Mohamed and not any other decision.

Furthermore, in her submission the applicant submitted that the eviction has already taken place and in her view the respondents were legally evicted.

Responding to the above submission, the respondents refuted the allegation that they were time barred. It was their submission that they immediately appealed the District Land and Housing Tribunal's decision.

Regarding the case against the applicant, the respondents argued that they had a case against the applicant for evicting them from the house which did not belong to her. In addition, they as well maintained that the judgment annexed was proper as they were tenants under the one who bought the house legally.

In a short rejoinder the applicant stressed that since there was a case between the present applicant and present respondents, then that decision was the one to be attached and not any other decision as done by the respondents. She as well countered the respondent's submission that they could not argue the house belonged to one Sadiki since there is a pending matter before the Court of Appeal.

I have perused the record and noted that, it is an undisputed fact that there had been several cases and/or appeals thereof in respect of the house No. 28 on Plot No. 27, Block 20, Kipata Street, Kariakoo Dar es Salaam (suit premises). There is for sure a pending revision before the Court of Appeal as Civil Application for revision No. 119 of 2009 and an appeal No. 67 of 2010 before this court, emanating from the District Land and Housing Tribunal in Land Application No. 294 of 2007.

The appeal No. 67 of 2010 had a Chamber Summons by the applicants seeking temporary injunction and for leave to still reside in the suit premises. The respondent raised an objection to counter the applicant's application. The application raised three preliminary points of objection which were argued before the court and hence this ruling.

Now looking at the objection raised, it is without doubt that the application for temporary injunction and leave to still reside in the suit premises has been overtaken by events. The respondents have already been evicted from the suit premises. The respondents did not dispute that fact in course of their submission and/or show that the temporary injunction if not granted they will suffer irreparable loss. The fact that there is a pending matter before the Court of Appeal in which they were not directly involved was not in itself sufficient ground to warrant grant of the above application.

In view of that I thus do not see any possibility the order being sought to serve any useful purpose. This is because the matter having been overtaken by events, the stay order sought would therefore not achieve the purpose it was intended i.e maintaining status quo.

With that in mind I thus uphold the preliminary point of objection raised regarding the matter to have been overtaken by events. This position in a way stops me from further laboring on the remaining two points as the one point determined has completely cause the application to be impractical.

Nonetheless, upholding of the points of objection raised does not mean the appeal itself is as well useless. That has not been determined and therefore still valid before the court pending determination.

For the foregoing I thus uphold the preliminary points of objection raised and consequently proceed to dismiss the application for temporary injunction filed under Order

XXXVII rule 1 and Section 95 of the Civil Procedure Code,
Cap 33 R.E. 2002.

It is so ordered.

Ruling Delivered this 2nd day of October 2012 in the
presence of parties.

P.S. FIKIRINI

JUDGE

2ND OCTOBER 2012

Right of Appeal Explained.

P.S. FIKIRINI

JUDGE

2ND OCTOBER 2012